

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 778

SEPTEMBER 30, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 778

SEPTEMBER 30, 1947.

1. APPELLATE DECISIONS - VASSOS AND MURPHY v. SPRINGFIELD TOWNSHIP.

WILLIAM VASSOS and CHARLES
MURPHY, t/a GOLDEN MOON CAFE,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF SPRINGFIELD
(Burlington County),

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

James M. Davis, Jr., Esq., Attorney for Appellants.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from the alleged denial of an application for renewal of a plenary retail consumption license for premises located at N/W corner of Monmouth Road and State Highway 39, Township of Springfield.

Upon the filing of this appeal an order was entered herein on June 30, 1947, extending the term of the prior license under the provisions of R. S. 33:1-22.

The evidence herein discloses that appellants complied with all the statutory prerequisites necessary to the renewal of their license. On June 18, 1947 the application for renewal was considered at a meeting of respondent Township Committee. At said meeting no action was taken to grant or deny the application for renewal and, so far as appears, no action upon the application has been taken since that time.

Respondent has given no reasons for refusal to renew the license, has filed no answer herein, and did not appear at the hearing. Under these circumstances its action must be deemed arbitrary and unreasonable. Jensen v. Manasquan, Bulletin 87, Item 9. In view of the foregoing, the action of respondent must be reversed.

Accordingly, it is, on this 22nd day of September, 1947,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is ordered to issue a renewal of appellants' license.

ERWIN B. HOCK
Commissioner.

2. APPELLATE DECISIONS - SMITH v. SPRINGFIELD TOWNSHIP.

CONSTANCE SMITH,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SPRINGFIELD)
(Burlington County),)

Respondent)
-----)

James M. Davis, Jr., Esc., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from the alleged denial of an application for renewal of a plenary retail consumption license for premises located on the East side of Pemberton Road, Township of Springfield.

Upon the filing of this appeal an order was entered herein on June 27, 1947, extending the term of the prior license under the provisions of R. S. 33:1-22.

The evidence herein discloses that appellant complied with all the statutory prerequisites necessary to the renewal of her license. On June 18, 1947 the application for renewal was considered at a meeting of respondent Township Committee. A motion to grant the renewal was made, but not seconded, and no further action was taken upon the application.

Respondent has given no reasons for refusal to renew the license, has filed no answer herein, and did not appear at the hearing. Under these circumstances its action must be deemed arbitrary and unreasonable. Jensen v. Manasquan, Bulletin 87, Item 9. In view of the foregoing, the action of respondent must be reversed.

Accordingly, it is, on this 2nd day of September, 1947,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is ordered to issue a renewal of appellant's license.

ERWIN B. HOCK
Commissioner.

3. HOURS OF SALE - EFFECT OF C. 97, P. L. 1946, AMENDING R.S.1:1-2.3 - DAYLIGHT SAVING TIME EFFECTIVE THROUGHOUT THE STATE FROM LAST SUNDAY IN APRIL UNTIL LAST SUNDAY IN SEPTEMBER.

Under New Jersey law (Revised Statutes, 1:1-2.3) the standard of time in the State is Eastern Standard Time except from the last Sunday in April until the last Sunday in September, in each year, when the standard of time is Eastern Daylight Saving Time which is one hour in advance of Eastern Standard Time.

The law is state-wide in its application and is binding on all municipalities.

This year's Daylight Saving Time period is almost over. From midnight Saturday, September 27th, and throughout the seven-month Eastern Standard Time period, the time will be one hour behind the present Daylight Saving Time. To illustrate: As of midnight Saturday, September 27th, clocks are to be turned back one hour. If the regulations of "Municipality X" require closing between the hours of 2:00 a.m. and 7:00 a.m., that municipality's licensed premises must be closed when the changed clock-time reaches 2:00 a.m. and remain closed until the changed clock-time reaches 7:00 a.m.

In some other states the change to Standard Time will take place at 2:00 a.m. on the morning of Sunday, September 28th. Similarly, in some New Jersey municipalities, there are ordinances or resolutions or executive proclamations which indicate that the change to Standard Time is to take place, in the particular municipality, at 2:00 a.m. on the morning of Sunday, September 28th. But regardless of such ordinances, resolutions or proclamations, the change back to Eastern Standard Time will be legally effective in all New Jersey municipalities not at 2:00 a.m. on the morning of Sunday, September 28th but at midnight Saturday, September 27th.

ERWIN B. HOCK
Commissioner.

Dated: September 24, 1947.

The policy enunciated by the former governing body is not binding upon the present number. Cf. Northend Tavern Inc. v. Northvale and Payne, Bulletin 493, Item 5. Clearly, the resolution of November 1944 was without legal force or effect for, since July 1, 1937, municipal governing bodies have been empowered to enact numerical limitation regulations by ordinance only. R. S. 33:1-40.

As to (b): Prior to May 14, 1947, two plenary retail distribution licenses had been issued in Atlantic Highlands -- one to Jacob Lemberg for premises at 75 First Avenue and the other to Jerry R. Rich for premises on Avenue "A", in a different section of the Borough. Prior to May 14, 1947 there had also been issued in the Borough twelve plenary retail consumption licenses, three of which were located on First Avenue within two blocks of respondent Hoffmann's premises. The population of the Borough, according to the 1940 Federal census, was 2,335. The question to be decided herein is whether or not the issuance of a third plenary retail distribution license for the premises owned by respondent Hoffmann constituted an abuse of the discretionary power conferred on the respondent Borough Council by the provisions of R. S. 33:1-19 and R. S. 33:1-24.

The evidence shows that the Borough of Atlantic Highlands is a summer resort wherein the population during the summer season is increased to more than 3,000; that the section of First Avenue wherein the licenses referred to herein are located is a business section; and that approximately 3,000 persons who reside during the summer months in Atlantic Highlands and surrounding communities shop in this business section. Respondent Hoffmann testified that she conducts a large drug store and that many of her patrons are women who would not care to visit a tavern. The license considered herein was granted by the unanimous vote of the five Councilmen who attended the meeting held on May 14, 1947. Three of these Councilmen testified at the hearing herein that they felt that there was need for an additional plenary retail distribution license on First Avenue because it was the shopping center and because of the "buying population" which one Councilman described as "three times our local population".

In Williams et al. v. Atlantic Highlands and Richard, Bulletin 700, Item 2, the Commissioner found, upon the evidence then presented, that the Borough Council had abused its discretion in issuing an additional plenary retail consumption license to Andrew Richard. Reviewing that case I find, in addition to the difference as to location of the premises there and here involved, that the license was granted to Richard by a four-to-two vote and two of the four Councilmen who voted to grant that license had, only a few months previously, voted to adopt the resolution of November 1944. Their reasons, stated on the appeal, for changing their opinion were not convincing. Hence, the decision in the Richard case does not necessarily preclude a different result on the evidence presented by the present members of the Council in the case now before me. I conclude from all the evidence herein that the appellants have not sustained the burden of showing that respondent Borough Council abused its discretion in issuing an additional plenary retail distribution license to respondent Anna S. Hoffmann. Cf. Koven et al. v. Pompton Lakes and Klein, Bulletin 763, Item 8.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND PRAASCH.
BAY SHORE TAVERN ASSOCIATION v. ATLANTIC HIGHLANDS AND PRAASCH.

ROY E. WILLIAMS, JR. and)
DONALD N. CORREAL,)

Appellants,)

-vs-)

BOROUGH COUNCIL OF THE BOROUGH)
OF ATLANTIC HIGHLANDS and)
FRED PRAASCH, t/a PIER HOTEL,)

Respondents)

-----)
BAY SHORE TAVERN ASSOCIATION,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE BOROUGH)
OF ATLANTIC HIGHLANDS and FRED)
PRAASCH, t/a PIER HOTEL,)

Respondents)

-----)
Elmer O. Goodwin, Esq., Attorney for Appellants Roy E. Williams, Jr.)
and Donald N. Correal.)

William C. Egan, Esq., Attorney for Appellant Bay Shore Tavern)
Association.)

John M. Pillsbury, Esq., Attorney for Respondent Borough Council.)

Edward F. Juska, Esq., Attorney for Respondent Fred Praasch.)

BY THE COMMISSIONER:

These appeals were filed from the issuance by respondent Borough Council of a plenary retail consumption license for the 1946-47 fiscal year to respondent Fred Praasch for premises at 40 First Avenue and part of 38 First Avenue, Atlantic Highlands. The license in question was issued upon the following conditions which were approved by the State Commissioner on June 10, 1947:

- "1. Said license shall permit only the operation of a service bar and shall prohibit the use or sale of alcoholic beverages from a public bar.
- "2. No alcoholic beverages shall be sold or served except to patrons seated at tables upon the licensed premises."

The license in question was granted on May 14, 1947, and hence the provisions of P.L. 1947, c. 94 do not apply.

Appellants allege in substance that the action of Borough Council was erroneous because (a) in November 1944 the Borough Council of Atlantic Highlands determined by resolution that there were at that time sufficient licenses outstanding; (b) the number of existing licenses on May 14, 1947 was far in excess of the number required by public necessity and convenience and the action of respondent issuing authority constituted an abuse of discretion; (c) the Borough Council denied a similar application for the same premises on March 31, 1947; (d) the licensee is not a resident of the State of New Jersey.

ON APPEAL
CONCLUSIONS AND ORDER

As to (a): It appears that none of the six members who now constitute the Borough Council was a member of Borough Council in November 1944.

Deviation from a policy enunciated by a former governing body is not necessarily arbitrary or unreasonable. "On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion."

Northend Tavern Inc. v. Northvale and Payne, Bulletin 493, Item 5. Clearly, a numerical limitation resolution adopted after July 1, 1937 could have no legal force or effect for, since that date, municipal governing bodies have had authority to enact such limitations by ordinance only. R. S. 33:1-40.

As to (b): Prior to May 14, 1947, twelve plenary retail consumption licenses had been issued in the Borough of Atlantic Highlands. Three of these licenses had been issued for premises located on First Avenue within approximately 300 feet of the Pier Hotel. However, this section of First Avenue constitutes the shopping district of the Borough, and the evidence shows that the "buying population", including those coming from surrounding communities, is approximately 9,000 during the summer season and approximately three times the summer population of the Borough. The testimony indicates that there are fifteen rooms on the second floor and a dining room accommodating 100 people on the first floor of the Pier Hotel. Councilman Goode testified as follows:

"I felt that we would be needing a good restaurant in the town; there was not a good restaurant, there were many lunehrooms but there isn't a good restaurant in the town. The nearest one is the Log Cabin, which is approximately two miles away. ***I believe there is a place in the town for a good restaurant with a service bar, but there isn't any room for another tap-room."

Councilman Dauster testified as follows:

"There are only small restaurants where you might get a bite to eat. *** With the boat lines coming down, hundreds of people coming there, they haven't anywhere to eat. *** The only other place is the Log Cabin, a mile and a half away. *** So we definitely need a hotel and a good restaurant."

Councilman Barnes, who voted in favor of granting the license, did not testify at the hearing. Councilman Curry, who voted with Councilman Stockton against the granting of the license, testified that he voted to deny the license because he felt that the applicant could not operate a hotel successfully because of the terms of his lease. However, it appears that the applicant had been engaged in the hotel and restaurant business for more than twenty-five years in the State of New York. Considering all the evidence, and particularly the conditions imposed upon the license, I find that appellant has not sustained the burden of proof in showing that the Borough Council abused its discretion in issuing the license to respondent Praasch.

As to (c): It appears that a similar application by Charmar Realty Corp., for the same premises, had been denied by the Borough Council on March 31, 1947. However, the evidence establishes that this application was denied because the premises were being renovated and were not then in a fit condition to be used as licensed premises, and also because the applicant represented that it intended to install a twenty-four-foot bar which was apparently to be open to the public. The denial of the application on March 31st did not, under the circumstances, preclude the Borough Council from reaching a different result upon the facts submitted at its meeting held on May 14th.

As to (d): Respondent Praasch testified that he formerly resided in New York City but that he became a resident of New Jersey on April 12, 1947; that he now resides with his wife (who is the only other member of his family) at the Pier Hotel and that he intends to reside permanently in New Jersey. No substantial evidence was introduced to contradict this testimony. I conclude that respondent Praasch satisfied the State residence requirement of R. S. 33:1-25.

Under all the circumstances, I shall affirm the action of respondent Borough Council.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. APPELLATE DECISIONS - BAY SHORE TAVERN ASSOCIATION v. HIGHLANDS AND CIROALO.

BAY SHORE TAVERN ASSOCIATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF HIGHLANDS, and JEAN CIROALO,)
t/a SEASIDE HOTEL,)
Respondents)

William C. Egan, Esq., Attorney for Appellant.
John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
Edward F. Juska, Esq., Attorney for Respondent Jean Ciralo.

BY THE COMMISSIONER:

This appeal was filed from the issuance, by respondent Borough Council, of a plenary retail consumption license for the 1946-47 fiscal year to respondent Jean Ciralo for premises at 36 Fifth Street, Borough of Highlands.

The license in question was granted on April 21, 1947, and hence the provisions of Chapter 94, P.L. 1947 do not apply.

Appellant alleges in substance that the action of Borough Council was erroneous because (a) said license was granted and issued without regard for the paramount issue of public necessity and convenience and the action of respondent issuing authority constituted an abuse of discretion, and (b) it had, on December 20, 1946, denied a license to the same individual respondent for the same licensed premises.

As to (a): It appears that, at the time the license was issued to respondent Ciralo, no ordinance limiting the number of licenses was in effect and that a resolution of the Borough Council adopted on June 12, 1939, which purported to limit the number of plenary retail consumption licenses to fifteen, was without legal validity. Cf. Highlands Tavern Owner's Assn. v. Highlands and Corcoran, Bulletin 756, Item 6. At the time the license was issued to respondent Ciralo, twenty-seven plenary retail consumption licenses were already in existence in the Borough of Highlands. The testimony

indicates that the permanent population of the Borough is between 2,000 and 3,000, but that the summer population is estimated to be nearly 15,000. The estimate of the summer population appears to be exaggerated. The appellant rests its case upon the number of licenses outstanding and the fact that a prior application for a similar license had been denied in December 1946.

On behalf of respondents, Councilman Rast testified that the members of the Borough Council were in favor of issuing licenses for hotels and that they were satisfied that respondent Ciroalo operated a bona fide hotel. Jean Ciroalo testified that the building for which she obtained a license contains a ground floor and three upper floors; that her restaurant is located on the ground floor and that the upper floors contain thirty-five rooms, twenty-five of which rooms are rented out to guests. She testified further that the hotel can accommodate approximately thirty-five guests; that it has a restaurant and bar, and that she intends to operate throughout the entire year. Seaside Hotel is located in close proximity to the beach, and the nearest licensed hotel is located about one-half mile away.

As to (b): Councilman Rast testified that a prior application filed by respondent Ciroalo was denied because of the lack of parking facilities at the premises. He further testified that, after the application for the present license was filed on March 18, 1947, members of the Borough Council inspected the premises and found that a large parking lot had been built in the rear of the hotel. Councilman Rast further testified that, because the parking problem had thus been solved, the members of the Borough Council decided to grant the present application.

My duty on an appeal of this character is not to substitute my judgment for that of the issuing authority, but to examine the record for the purpose of ascertaining if the local issuing authority abused its discretionary power. After considering all the evidence in this case, I cannot say that the appellant has sustained the burden of proof in showing that respondent Borough Council abused its discretionary power in issuing a plenary retail consumption license to respondent Jean Ciroalo.

Hence the action of respondent Borough Council will be affirmed.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of the respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - BAY SHORE TAVERN ASSOCIATION v. HIGHLANDS AND ORMOND.

BAY SHORE TAVERN ASSOCIATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF HIGHLANDS, and FRANCIS R.)
ORMOND, t/a ROXY'S BAR AND GRILL,)
Respondents)

-----)
William C. Egan, Esq., Attorney for Appellant.
John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
Benjamin Gruber, Esq., Attorney for Respondent Francis R. Ormond.

BY THE COMMISSIONER:

This is an appeal from the issuance, by respondent Borough Council, of a plenary retail consumption license for the 1946-47 fiscal year to respondent Francis R. Ormond for premises at 18 Beach Boulevard, Borough of Highlands.

Appellant alleges in substance that the action of the Borough Council was erroneous because (a) said license was granted and issued without regard for the paramount issue of public necessity and convenience and the action of respondent issuing authority constituted an abuse of discretion, and (b) prior to, and at the time of, said issuance and granting, there were ample licenses in the community and in the neighborhood of the premises for which said license was granted or issued to take care of community and neighborhood needs.

Appellant is a non-incorporated association consisting of liquor licensees, all of whose premises, with one exception, are located in Middlesex County. Apparently some steps had been taken to incorporate appellant association but it appears that the incorporation was never completed because the certificate of incorporation was not filed with the Secretary of State as required by R. S. 14:2-4. I find that appellant is eligible to file the within appeal. Hudson Bergen County Retail Liquor Stores v. Hoboken et al., 135 N.J.L. 502.

Prior to May 12, 1947 (the date upon which the Ormond license was granted), twenty-eight plenary retail consumption licenses were already in existence in the Borough of Highlands. The testimony indicates that the permanent population of the Borough is between 2,000 and 3,000, but that the summer population is estimated to be nearly 15,000. The estimate appears to be exaggerated. From these figures it is apparent that, prior to the issuance of the license in question, there was one plenary retail consumption license for approximately each one hundred of the permanent population. Even if due allowance is made for the increase in the summer population, the issuance of any plenary retail consumption licenses in excess of twenty-eight would appear to be excessive and an abuse of the discretionary power conferred upon the local issuing authority by R. S. 33:1-19, R. S. 33:1-24.

The testimony herein discloses that, at its meeting held on May 12, 1947, the Borough Council issued four additional plenary retail consumption licenses including the license issued to respondent Ormond. Councilman Rast testified that "the general feeling was that we should give them all a license. *** There were a hundred people around the room; all of them wanted to give a license to these veterans, feeling how they fought in this war." It seems quite

apparent from this testimony that the members of the Borough Council did not give any consideration to the question of public need for additional plenary retail consumption licenses in the community at the time these four additional licenses were granted.

It also appears from the testimony that the license issued to respondent Ormond covers the first floor of the building at 18 Beach Boulevard, and that on another part of the same property boats are rented to fishermen. Apparently the licensee's business caters principally to the needs of the fishermen. The surrounding area appears to be developed as a residential section, with bungalows nearby. At least four plenary retail consumption licenses have been issued for premises within a few blocks of the premises operated by respondent Ormond.

The issuance of an additional license for Ormond's premises appears to be unnecessary, especially in view of the fact that a number of plenary retail consumption licenses have been issued near his premises. From all the evidence, I conclude that respondent Borough Council abused its discretion in issuing the license to respondent Ormond. The action of respondent Borough Council in issuing a plenary retail consumption license to respondent Ormond for the 1946-47 fiscal year will, therefore, be reversed and the license held by respondent Ormond for the present fiscal year will be cancelled. The cancellation of the present license is based upon the fact that P.L. 1947, c. 94 prohibited the issuance of a new license on July 1, 1947, and hence the only theory upon which the legality of the present license could be sustained would be upon the ground that it was a renewal of the license issued for the 1946-47 licensing period. Since the original license is being set aside, the renewal license must be cancelled.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license for the 1946-47 fiscal year to respondent Francis R. Ormond, t/a Roxy's Bar and Grill, for premises at 18 Beach Boulevard, Borough of Highlands, be and the same is hereby reversed; and it is further

ORDERED that the license issued to respondent Ormond for the 1947-48 fiscal year be and the same is hereby cancelled, effective at 3:00 a.m. September 29, 1947.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - BAY SHORE TAVERN ASSOCIATION v. HIGHLANDS AND BRUSH.

BAY SHORE TAVERN ASSOCIATION,

Appellant,

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH
OF HIGHLANDS, and EDWARD R.
BRUSH, t/a VICTORY HOUSE,

Respondents

William C. Egan, Esq., Attorney for Appellant.
John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
Giuliano & Giuliano, Esqs., by James R. Giuliano, Esq.,
Attorneys for Respondent Edward R. Brush.

BY THE COMMISSIONER:

This is an appeal from the issuance by respondent Borough Council of a plenary retail consumption license for the 1946-47 fiscal year to respondent Edward R. Brush for premises at 231 Bay Avenue, Borough of Highlands.

Appellant alleges in substance that the action of the Borough Council was erroneous because (a) said license was granted and issued without regard for the paramount issue of public necessity and convenience and the action of respondent issuing authority constituted an abuse of discretion, and (b) prior to, and at the time of, said issuance and granting, there were ample licenses in the community and in the neighborhood of the premises for which said license was granted or issued to take care of community and neighborhood needs.

Appellant is a non-incorporated association consisting of liquor licensees, all of whose premises, with one exception, are located in Middlesex County. Apparently some steps had been taken to incorporate appellant association but it appears that the incorporation was never completed because the certificate of incorporation was not filed with the Secretary of State as required by R.S. 14:2-4. I find that appellant is eligible to file the within appeal. Hudson Bergen County Retail Liquor Stores v. Hoboken et al., 135 N.J.L. 502.

Prior to May 12, 1947 (the date upon which the Brush license was granted), twenty-eight plenary retail consumption licenses were already in existence in the Borough of Highlands. The testimony indicates that the permanent population of the Borough is between 2,000 and 3,000, but that the summer population is estimated to be nearly 15,000. The estimate appears to be exaggerated. From these figures it is apparent that, prior to the issuance of the license in question, there was one plenary retail consumption license for approximately each one hundred of the permanent population. Even if due allowance is made for the increase in the summer population, the issuance of any plenary retail consumption licenses in excess of twenty-eight would appear to be excessive and an abuse of the discretionary power conferred upon the local issuing authority by R. S. 33:1-19, R. S. 33:1-24.

The testimony herein discloses that, at its meeting held on May 12, 1947, the Borough Council issued four additional plenary retail consumption licenses including the license issued to respondent Brush. Councilman Rast testified that "the general feeling was that we should give them all a license. *** There were a hundred people around the room; all of them wanted to give a license to these veterans, feeling how they found in this war." It seems quite apparent from this testimony that the members of the Borough Council did not give any consideration to the question of public need for additional plenary retail consumption licenses in the community at the time these four additional licenses were granted.

It also appears from the testimony that the license issued to respondent Brush covers the first floor of a three-story frame building located at 231 Bay Avenue, between Cedar Street and Valley Avenue. Respondent Brush testified that he operates a tavern with restaurant facilities on the first floor, and that the upper floors of the building are operated as a rooming house containing accommodations for sixteen guests, in addition to living quarters occupied by himself and his family.

At the time the license was issued to respondent Brush, there were already three premises licensed for consumption in the immediate neighborhood -- one upon the same side of Bay Avenue between Cedar Street and Valley Avenue and two upon the opposite side of Bay Avenue between Cedar Street and Valley Avenue.

The issuance of an additional license for Brush's premises appears to be unnecessary, especially in view of the fact that three plenary retail consumption licenses had previously been issued for premises on Bay Avenue between Cedar Street and Valley Avenue.

The action of respondent in issuing a plenary retail consumption license to respondent Brush for the 1946-47 fiscal year will, therefore, be reversed and the license held by respondent Brush for the present fiscal year will be cancelled. The cancellation of the present license is based upon the fact that P. L. 1947, c. 94 prohibited the issuance of a new license on July 1, 1947, and hence the only theory upon which the legality of the present license could be sustained would be upon the ground that it was a renewal of the license issued for the 1946-47 licensing period. Since the original license is being set aside, the renewal license must be cancelled.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license for the 1946-47 fiscal year to respondent Edward R. Brush, t/a Victory House, for premises at 231 Bay Avenue, Borough of Highlands, be and the same is hereby reversed; and it is further

ORDERED that the license issued to respondent Brush for the 1947-48 fiscal year be and the same is hereby cancelled, effective at 3:00 a.m. September 29, 1947.

ERWIN B. HOCK
Commissioner.

9. APPELLATE DECISIONS - BAY SHORE TAVERN ASSOCIATION v. HIGHLANDS AND SMITH.

BAY SHORE TAVERN ASSOCIATION,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE BOROUGH)
 OF HIGHLANDS, and JOSEPHINE)
 SMITH, t/a SMITH'S BAR AND GRILL,)
)
 Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

 William C. Egan, Esq., Attorney for Appellant.
 John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
 Benjamin Gruber, Esq., Attorney for Respondent Josephine Smith.

BY THE COMMISSIONER:

This is an appeal from the issuance by respondent Borough Council of a plenary retail consumption license for the 1946-47 fiscal year to respondent Josephine Smith for premises at 214 Bay Avenue, Borough of Highlands.

Appellant alleges in substance that the action of the Borough Council was erroneous because (a) said license was granted and issued without regard for the paramount issue of public necessity and convenience and the action of respondent issuing authority constituted an abuse of discretion, and (b) prior to, and at the time of, said issuance and granting, there were ample licenses in the community and in the neighborhood of the premises for which said license was granted or issued to take care of community and neighborhood needs.

Appellant is eligible to file the within appeal. Hudson Bergen County Retail Liquor Stores v. Hoboken et al., 135 N.J.L. 502.

Prior to May 12, 1947 (the date upon which the Smith license was granted), twenty-eight plenary retail consumption licenses were already in existence in the Borough of Highlands. The testimony indicates that the permanent population of the Borough is between 2,000 and 3,000, but that the summer population is estimated to be nearly 15,000. The estimate appears to be exaggerated. From these figures it is apparent that, prior to the issuance of the license in question, there was one plenary retail consumption license for approximately each one hundred of the permanent population. Even if due allowance is made for the increase in the summer population, the issuance of any plenary retail consumption licenses in excess of twenty-eight would appear to be excessive and an abuse of the discretionary power conferred upon the local issuing authority by R. S. 33:1-19, R. S. 33:1-24.

The testimony herein discloses that, at its meeting held on May 12, 1947, the Borough Council issued four additional plenary retail consumption licenses including the license issued to respondent Smith. Councilman Rast testified that "the general feeling was that we should give them all a license. *** There were a hundred people around the room; all of them wanted to give a license to these veterans, feeling how they fought in this war." It seems quite apparent from this testimony that the members of the Borough Council did not give any consideration to the question of public need for additional plenary retail consumption licenses in the community at the time these four additional licenses were granted.

It also appears from the testimony that, at the time the license was issued to respondent Smith, there were two taverns upon the same side of Bay Avenue in close proximity to, and one tavern upon the opposite side of Bay Avenue almost directly opposite, the Smith premises.

The issuance of an additional license for Smith's premises appears to be unnecessary, especially in view of the fact that three plenary retail consumption licenses had already been issued for premises in close proximity to the premises occupied by respondent Smith. From all the evidence I find that respondent Borough Council abused its discretion in issuing a license to respondent Smith. The action of respondent Borough Council in issuing a plenary retail consumption license to respondent Smith for the 1946-47 fiscal year will, therefore, be reversed and the license held by respondent Smith for the present fiscal year will be cancelled. The cancellation of the present license is based upon the fact that P.L. 1947, c. 94 prohibited the issuance of a new license on July 1, 1947, and hence the only theory upon which the legality of the present license could be sustained would be upon the ground that it was a renewal of the license issued for the 1946-47 licensing period. Since the original license is being set aside, the renewal license must be cancelled.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license for the 1946-47 fiscal year to respondent Josephine Smith, t/a Smith's Bar and Grill, for premises at 214 Bay Avenue, Borough of Highlands, be and the same is hereby reversed; and it is further

ORDERED that the license issued to respondent Smith for the 1947-48 fiscal year be and the same is hereby cancelled, effective at 3:00 a.m. September 29, 1947.

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - BAY SHORE TAVERN ASSOCIATION v. HIGHLANDS AND RYAN.

BAY SHORE TAVERN ASSOCIATION,)
Appellant,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF HIGHLANDS, and HUBERT RYAN,)
t/a RYAN'S,)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Appellant.
John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
Benjamin Gruber, Esq., Attorney for Respondent Hubert Ryan.

BY THE COMMISSIONER:

This is an appeal from the issuance by respondent Borough Council of a plenary retail consumption license for the 1946-47 fiscal year to respondent Hubert Ryan for premises at 163 Bay Avenue, Borough of Highlands.

Appellant alleges in substance that the action of respondent issuing authority constituted an abuse of discretion.

At the hearing scheduled to be held herein, respondent Hubert Ryan did not appear. The evidence discloses that, prior to May 12, 1947 (the date upon which the Ryan license was granted), twenty-eight plenary retail consumption licenses were already in existence in the Borough of Highlands, six of which had been issued for premises on Bay Avenue in close proximity to Ryan's premises.

The attorney for respondent Ryan has advised me that his client is not interested in continuing as a liquor licensee and that his client has not made application for renewal of his license for the present fiscal year.

For the reasons set forth in Bay Shore Tavern Assn. v. Highlands and Smith (decided herewith), the action of respondent Borough Council will be reversed.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent Borough Council in issuing a plenary retail consumption license for the 1946-47 fiscal year to respondent Hubert Ryan, t/a Ryan's, for premises 163 Bay Avenue, Borough of Highlands, be and the same is hereby reversed.

ERWIN B. HOCK
Commissioner.

11. STATE LICENSES - NEW APPLICATION FILED.

Michael and Adam Yungler
T/a Tasty Bottling Co.
938 Franklin St. and 1331 Chambers St.
Trenton, N. J.

Application filed September 30, 1947 for transfer of State Beverage Distributor's License SBD-87 from Michael Yungler, t/a Tasty Bottling Co.

Erwin B. Hock
Commissioner.